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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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MAY 13 2004

FILE:

Office: NEWARK, NJ

Date:

IN RE:

Applicant

APPLICATION:

Application for Certificate of Citizenship under section 322 of the former Immigration and Nationality Act, 8 U.S.C. § 1433.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on October 30, 1982, in Cuba. The applicant's mother, [REDACTED] was born in Cuba on July 19, 1966, and she became a U.S. citizen on September 19, 2000, when the applicant was 17 years old. The applicant's father, [REDACTED] was born in Cuba on January 14, 1963. The record reflects that he is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 322 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1433.

The director/district director concluded that the applicant was statutorily ineligible for a certificate of citizenship under section 322 of the former Act because he turned eighteen years old prior to final adjudication of his application. The application was denied accordingly.

On appeal, the applicant, through his mother, indicates that he has obtained a U.S. passport and that he is therefore already a U.S. citizen. The applicant acknowledges that he filed his certificate of citizenship application with the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS) after he reached the age of eighteen. He asserts that he was unaware of maximum age requirements when he filed his certificate of citizenship application, and he requests reconsideration of his application.

The AAO notes that the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, presently allows a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

The AAO notes further that the provisions of the CCA are not retroactive and that the amended provisions of section 320 apply only to persons who were not yet eighteen-years-old as of February 27, 2001. Because the applicant was over the age of eighteen on February 27, 2001, he is not eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 322 of the former Act, in effect prior to February 27, 2001, stated, in pertinent part:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

- 1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- 2) The child is physically present in the United States pursuant to a lawful admission.

- 3) The child is under the age of 18 years and in the legal custody of the citizen parent.

....

- b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

The AAO notes that in order to qualify for a certificate of citizenship under section 322 of the former Act, an applicant must establish that she or he satisfies the requirements set forth in both section 322(a) and 322(b) of the former Act. The applicant in the present case failed to meet the requirements set forth in section 322(b) of the former Act, because the Service (CIS) did not receive or approve his certificate of citizenship application before he turned eighteen and because the applicant did not take an oath of allegiance prior to his eighteenth birthday.

The applicant also does not qualify for a certificate of U.S. citizenship pursuant to sections 321, 8 U.S.C. § 1432, and 320, 8 U.S.C. § 1431, of the former Act.

Former section 320 of the Act provided that:

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when

(1) such naturalization takes place while such child is under the age of 18 years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

Neither of the applicant's parents were U.S. citizens at the time of the applicant's birth. The applicant therefore does not qualify for consideration under former section 320 of the Act.

Former section 321 of the Act provided, in pertinent part, that:

(a) a child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-

(4) Such naturalization takes place while said child is under the age of 18 years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The applicant does not qualify for consideration under former section 321 of the Act. The applicant failed to establish that his father became a naturalized U.S. citizen prior to his eighteenth birthday. The applicant additionally failed to establish that he otherwise meets the requirements set forth in section 321 of the former Act.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In this case, the burden has not been met. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.